



U.S. Environmental Protection Agency
Applicability Determination Index

Control Number: M980015

Category: MACT
EPA Office: Region 4
Date: 03/03/1997
Title: Commonly Owned Contiguous Sources
Recipient: Williams, Author
Author: Smith, Winston

Subparts: Part 63, A, General Provisions
Part 63, H, HON

References: 63.2

Abstract:

Q: If a company owns 100% of an area source of HAPs and 50% of an adjoining major source of HAPs, should "contiguous properties under common control" be applied to the area source?

A: Yes. Joint ownership, voting interest, contracts, liability, managerial hierarchy, and dependency are screening tools to use for common control decisions.

Letter:

March 3, 1997

4APT-ARB

Mr. Author Williams
Director
Air Pollution Control District of
Jefferson County
850 Barrett Avenue, Suite 205
Louisville, Kentucky 40204

Dear Mr. Williams:

We have recently received a letter from the DuPont Fluoroproducts facility in Louisville, Kentucky, dated January 30, 1997, which concerns its' exemption from the Hazardous Organic NESHAP (HON) applicable requirements of Subpart H. The purpose of this letter is to provide you with comments on issues presented by the DuPont letter in order for you, as the permitting authority and the responsible implementing agency for the HON standard, to make the best managerial decisions affecting the environmental regulation of this facility.

DuPont's letter states that the facility is not a major source, as defined in 40 CFR Part 63.2, and therefore Subpart H of the HON does not apply. To better understand the history of the facility, Mr. Patrick Schmidt of your staff was contacted. According to Mr. Schmidt, DuPont originally owned and operated one facility consisting of two distinct processes, fluoroproducts and chloro compounds. It is our understanding that in April of 1996, DuPont sold a 50% share of the chloro compounds process (major source for HAPs in itself) with total control of the operations being performed by the new partners (i.e. DuPont Dow) and retained 100% control of the fluoroproducts facility (possibly an area source by itself). The issues presented by DuPont's letter, for Part 63 as well as Part 70 purposes, relate to the definition of a major source. More specifically, the primary issue is whether or not the two processes meet the definition of "contiguous properties under common control," and therefore should be considered as one facility. Because the issue is not new, general guidance (enclosed) and previous similar decisions are available for your assistance. However, each decision should be made on a case-by-case basis and only after a close examination of the facts are completed.

Based on the conversation with Mr. Schmidt, there is no question of the two processes being on "contiguous properties" and therefore, the one question for interpretation is the question relating to "common control" of the two. As stated in the enclosed guidance, joint ownership, voting interest, contracts, liability, managerial hierarchy, and dependency (i.e., process, products, support) are screening tools which can be used to make a common control decision. It is our opinion that since DuPont Fluoroproducts owns 50% of the DuPont Dow process, DuPont Fluoroproducts could exercise voting power over DuPont Dow or influence production levels at the facility, and therefore, both processes should be considered one source for Part 63 and Part 70 purposes (e.g., United Technologies (GA)).

As stated previously, regulatory control for the DuPont Fluoroproducts facility is your responsibility and accordingly, our comments are meant only to assist you in your decisions. If you have any questions concerning the above comments, please contact Mr. Lee Page of my staff at (404) 562-9131.

Sincerely,

Winston A. Smith
Director
Air, Pesticides and Toxics
Management Division

Enclosure

cc: Mr. Carl E. Hilton
Senior Environmental Engineer
DuPont Fluoroproducts
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